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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO HERNANDEZ,

Defendant and Appellant.

2d Crim. No. B214573
(Super. Ct. No. VA103436)
(Los Angeles County)

Ricardo Hernandez appeals from judgment after conviction by jury of one count of forcible rape and 11 counts of lewd acts upon a minor, his stepdaughter. (Pen. Code, § 261, subd. (a)(2), 288, subd. (c)(1).) Appellant contends that his conviction must be reversed because the trial court erroneously excluded evidence of witness bias. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant married P.'s mother when P. was a baby. He and P.'s mother had three additional children together. The family lived together in a three bedroom home.

When P. was 15, appellant started molesting her in her bed at night. He had intercourse with her 12 to 15 times.

On the last occasion, October 28, 2007, appellant was interrupted by the sound of P.'s mother in the hallway. He got up abruptly and went into the bathroom. P.'s mother pulled down P.'s bedcovers and saw P. pulling up her pajama pants. P. first

denied that anything had happened, but then told her mother that appellant had raped her. P.'s mother took P., with the other children, directly to the Downey police station.

At the police station, P. told Detective Villegas that appellant had raped her. She said appellant's weight held her down. She said it had not happened before, but that appellant had slept in her bed before. P. was an "Explorer Scout" in the Downey police department's youth program so she knew Detective Villegas and some other officers.

P. was taken to a hospital where she was examined. She told the sexual assault response team (SART) nurse the same things she had told Detective Villegas.

Several days after P. reported the rape, she was interviewed by the police department's sexual assault investigator, Detective Price. She told him that appellant started molesting her in August of 2007. He had intercourse with her 12-15 times over the next two months. P.'s testimony at the preliminary hearing was consistent with her statements to Detective Price.

The SART nurse had collected samples of semen from inside P.'s vagina and near her anus. DNA from these samples was tested and matched appellant's genetic profile.

Just before trial, P. recanted. She told Detective Price and the prosecutor that she made up the allegations. Then she said the allegations were true, but she was afraid and did not want her brother and her sisters to be without a father. At the end of the interview, she recanted again.

On the first or second day of trial, Detective Price interviewed P.'s friend Cassandra Salazar for the first time and gave a copy of his report to the defense. Cassandra said that P. called her in October 2007 and said appellant had raped her.

At trial, P. denied that appellant ever touched her inappropriately or had intercourse with her. P. said she made up the allegations because appellant was too strict and she wanted him out of the house. She said she did not recall ever calling her friend Cassandra and telling her that appellant had raped her.

P.'s prior inconsistent statements were presented through the testimony of Detective Villegas, the SART nurse, Detective Price and the transcript of P.'s preliminary hearing testimony.

P.'s mother testified. She denied that she was back together with appellant romantically or that she had pressured P. to recant. She denied attending a recent Christmas party with appellant. The jury heard a recording of her statement to police on the night she reported her daughter's rape. Two witnesses testified that they had seen P.'s mother with appellant at a Christmas party one month before trial.

Without objection from the defense, Cassandra testified. She said that she and P. were friends through the Explorer Scout program. In late October of 2007, P. called her and said that appellant had raped her. About a month later, P. told Cassandra that it had happened a couple of other times. Cassandra said she told a police detective about P.'s statements at the time.

Outside the presence of the jury, appellant's counsel represented that appellant's booking receipt had been circulated at his workplace. Counsel sought to introduce this evidence to prove witness bias. Counsel's theory was that Cassandra, or another witness, must have taken the booking receipt from the police station and given it to Cassandra's father (another co-worker of appellant), and that this demonstrated bias.

Counsel's first attempt to elicit testimony about the booking receipt was in her cross-examination of Detective Price. She asked him about the procedures for safeguarding booking receipts at the police station. The court told counsel that she could ask about the procedures, but that before she could "insinuate that Cassandra Salazar had anything to do with it" she would need to present evidence that "she did in fact take it" and then "we have other issues as well. [¶] . . . [¶] [Evidence Code section] 352 and so on." Detective Price testified that booking receipts are kept secure in the records department, away from the public. He did not know whether Explorer Scouts would have access to them.

Appellant's counsel next attempted to elicit testimony about the booking receipt from appellant. She sought "to elicit through my client that he observed this

booking sheet at his place of employment . . . when he returned to work." She offered the testimony to prove witness bias of Cassandra, Detective Price or Detective Villegas. Counsel reasoned that, of these witnesses, each was associated with the police station, and that the booking sheet could only have come from the police station. She argued, "it's my contention that one of them may have -- and I have no information that -- specifically that any one of them did -- but one of them may have given this information to an employee who then passed it out. [¶] What I believe that shows is bias and motive to lie on the part of some potential witnesses in this case, and if I were able to elicit that information, I would be able to argue that. [¶] So I'm asking the court to allow me to pursue that information just through -- solely through my client at this particular point in time." The court precluded the testimony under Evidence Code section 352, finding that it was more confusing than probative. Appellant made no other attempts on the record to elicit testimony about the booking receipt.

Appellant testified that he never had intercourse with P. and never touched her inappropriately. He was a strict parent and had taken privileges away from P. He testified that he was in Texas in the first two weeks of August. He presented some receipts from purchases made in Arizona and Texas between August 8 and 16, 2007.

A gynecologist testified on behalf of appellant that there was no evidence of forcible penetration in the photographs taken by the SART nurse. He would have expected to see physical injury if P. were repeatedly raped. He was not aware of the semen found in P.'s vagina.

In closing argument, defense counsel argued that P. lied to police and that appellant's DNA could have been transferred to P.'s skin by household linens and then inadvertently transferred into her vagina by the SART nurse during the exam.

The jury convicted appellant on all counts, after a requested read back of P.'s preliminary hearing testimony. Appellant moved for a new trial on several grounds. Appellant argued in his motion for new trial that the court erred "when [it] prevented the defense from eliciting evidence from Toni Simmons, a co-worker of the defendant, that [Cassandra's father] had been disciplined [by their mutual employer] for passing out the

booking sheet information of the defendant" at their place of employment. We find no reference to witness Simmons in the record of the trial. The trial court denied the motion for new trial.

DISCUSSION

Appellant contends that fundamental elements of his defense were undermined by the exclusion of evidence that his booking sheet was disseminated at his workplace. Specifically, appellant contends that the trial court erred by (1) precluding testimony of appellant's supervisor, Toni Simmons; (2) precluding Detective Price from referring to Carlos Salazar (Cassandra's father); and (3) precluding appellant from testifying that he saw his booking receipt at work. Only the last ruling is contained in the record, and it was not an abuse of discretion.

Defense counsel did not, on the record, offer Simmons as a witness or make any offer of proof that Detective Price had any personal knowledge about Carlos Salazar. She may have done so off the record, but the trial court gave her an opportunity to make a complete record with respect to the booking receipt issue and she did not mention Toni Simmons or Carlos Salazar. She said, "I'm asking the court to allow me to pursue that information just through -- solely through my client at this particular point in time."

The trial court acted within its discretion when it precluded counsel from asking appellant about the booking receipt. Evidence Code section 352 allows the trial court to "exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of . . . confusing the issues" We review exclusion of evidence under this section for abuse of discretion. (*People v. Mungia* (2008) 44 Cal.4th 1101, 1130.)

The Confrontation Clause guarantees to a defendant in a criminal prosecution the right to explore witness bias through cross-examination, but trial courts retain wide latitude to impose reasonable limits in order to prevent confusion of the issues or interrogation that is only marginally relevant. (*People v. Harris* (1989) 47 Cal.3d 1047, 1091.) A defendant's right to confront witnesses is not infringed by exclusion of

evidence that would impeach a witness on a collateral matter that is only slightly probative of veracity. (*People v. Jennings* (1991) 53 Cal.3d 334, 372.)

Evidence that appellant saw his booking receipt at work would not be even remotely probative on the issue of witness veracity without some evidence to link the booking receipt to a witness. Appellant's counsel conceded that appellant had no information that any witness had taken or circulated the booking receipt. Appellant did not argue, as he does on appeal, that Cassandra came forward to get back at appellant after her father was disciplined. Even if counsel had offered proof that Cassandra's father had been disciplined, the connection to Cassandra's veracity was remote and the evidence would raise reasonable concerns about juror speculation and confusion. The court weighed the probative value of the evidence that was offered against the risk of confusion and found the evidence to be "totally irrelevant" and "confusing." The court did not abuse its discretion when it excluded appellant's testimony about his booking receipt.

DISPOSITION

The judgment is affirmed.

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COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

Thomas McKnew, Judge
Superior Court County of Los Angeles

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

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